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Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities
New York, 24 January-4 February 2005

Report of the Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities on its fifth session

I. Introduction

1. In its resolution 56/168 of 19 December 2001, the General Assembly decided to establish the Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, based on a holistic approach in the work done in the fields of social development, human rights and non-discrimination and taking into account the recommendations of the Commission on Human Rights and the Commission for Social Development.

2. In its resolution 59/198 of 20 December 2004, the General Assembly decided that the Ad Hoc Committee should hold, within existing resources, prior to the sixtieth session of the Assembly, two sessions in 2005, of 10 working days each, to be held, respectively, from 24 January to 4 February and in July/August.

II. Organizational matters

A. Opening and duration of the fifth session

3. The Ad Hoc Committee held its fifth session at United Nations Headquarters from 24 January to 4 February 2005. In the course of its session, the Ad Hoc Committee held 20 meetings.

4. The Division for Social Policy and Development of the Department of Economic and Social Affairs acted as the substantive secretariat, while the Disarmament and Decolonization Affairs Branch of the Department for General

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Assembly and Conference Management served as the secretariat of the Ad Hoc Committee.

5. The fifth session of the Ad Hoc Committee was opened by the Chairman, Luis Gallegos Chiriboga, Ambassador and Permanent Representative of Ecuador to the United Nations.

B. Officers

6. The following officers continued to serve on the Bureau of the Ad Hoc Committee:

Chairman:

Luis Gallegos Chiriboga (Ecuador)

Vice-Chairpersons:

Ivana Grollovà (Czech Republic)
Leslie Gatan (Philippines)
Jeanette Ndhlovu (South Africa)
Carina Mårtensson (Sweden)

C. Agenda

7. At its 1st meeting, on 24 January 2005, the Ad Hoc Committee adopted the provisional agenda for its fifth session, as contained in document A/AC.265/2005/L.1, as follows:

1. Opening of the session.
2. Adoption of the agenda.
3. Organization of work.
4. Consideration of the proposed revisions and amendments to the draft text of the Working Group as contained in the reports of the Ad Hoc Committee on its third session (A/AC.265/2004/5, annex II) and fourth session (A/59/360, annex IV), and in proposals received by the Secretariat from the fourth session.
5. Conclusions of the Ad Hoc Committee at its fifth session.
6. Adoption of the report of the Ad Hoc Committee on its fifth session.

D. Documentation

8. The Ad Hoc Committee had before it the following documents:

(a) Provisional agenda (A/AC.265/2005/L.1);

(b) Proposed programme of work of the fifth session (conference room paper);

(c) Report of the Working Group to the Ad Hoc Committee (A/AC.265/2004/WG.1);

(d) Report of the Ad Hoc Committee on its third session (A/AC.265/2004/5 and Corr.1);

(e) List of participants (A/AC.265/2005/INF/1 and Add.1);

(f) Monitoring implementation of the international human rights instruments: an overview of the current treaty body system: background document prepared by the Office of the United Nations High Commissioner for Human Rights (conference room paper);

(g) Note verbale dated 1 February 2005 from the Permanent Mission of Burkina Faso to the United Nations addressed to the Secretariat (A/AC.265/2005/1).

III. Organization of work

9. During its fifth session, the Ad Hoc Committee conducted informal discussions on articles 7 (para. 5) to 15 of the draft convention and proposed additional articles in accordance with the programme of work adopted at its first meeting, on 24 January 2005. At its 20th meeting, on 4 February, the Ad Hoc Committee heard the report of the Coordinator on the progress made in the informal discussions held on the aforementioned draft articles (see annex II). The Ad Hoc Committee decided to continue to review the draft convention at its next session.

IV. Recommendations

10. The Ad Hoc Committee decided to continue its work at its sixth session, to be held from 1 to 12 August 2005.

11. The Ad Hoc Committee invites the members of its Bureau to hold intersessional meetings in regard to the preparation and organization of its sixth session, including the preparation of the provisional agenda, which is to be issued at least four weeks prior to the sixth session.

12. The Ad Hoc Committee decided that the regional groups should hold intersessional informal consultations on the composition of its Bureau, in accordance with the principles and established practices of the United Nations.

13. The Ad Hoc Committee also decided to include the item "Election of officers" in the agenda for its sixth session.

14. With regard to accessibility and in accordance with General Assembly resolutions 58/246 of 23 December 2003 and 59/198 and Assembly decision 56/474 of 23 July 2002, the Ad Hoc Committee reiterated the need for additional efforts to be made to ensure accessibility at the United Nations, with reasonable accommodation as regards facilities and documentation, for all persons with disabilities.

V. Adoption of the report of the Ad Hoc Committee

15. At its 20th meeting, on 4 February, the Ad Hoc Committee adopted the draft report on its fifth session (A/AC.265/2005/L.2), as orally amended.

Annex I

Additional non-governmental organizations accredited to the Ad Hoc Committee

Adaptive Environments (United States of America)

Association of University Centers on Disabilities (United States of America)

Centre for Studies on Inclusive Education (United Kingdom of Great Britain and Northern Ireland)

Corporación Ciudadania Real de Sordos de Chile

Fédération guinéenne des associations de personnes handicapées

Japan Disability Forum

Mental Disability Advocacy Centre (Hungary)

Shanta Memorial Rehabilitation Centre (India)

Annex II

Report of the Coordinator to the Ad Hoc Committee at its fifth session

Introduction

1. Informal meetings of the Ad Hoc Committee were held from 24 January to 4 February 2005 on draft articles 7 (para. 5), 8, a new 8 bis, 9, a new 9 bis, 10, 11, 12, a new 12 bis, 13, 14 and 15.

2. The text of the draft convention prepared by the Working Group (A/AC.265/2004/WG.1, annex I) formed the basis for the discussion, which took into account the amendments and proposals made during previous meetings, as contained in the compilation document.

3. The aim of the discussions was to clarify as many of the issues concerning the draft articles as possible. The present report indicates where there is general agreement on language and where there remains a divergence of views that will need to be resolved at a subsequent meeting. Where general agreement was reached, it was on the clear understanding that it was without prejudice to the ability of delegations to reconsider the draft articles at a subsequent stage, when the shape of the overall convention became clear.

Discussion of draft articles

Draft article 7, paragraph 5

4. Following an extensive discussion of paragraph 5 of draft article 7, there was general agreement that the words "measures aimed at accelerating de facto equality of persons with disabilities shall not be considered discrimination" should remain in the text. There was, however, no agreement on whether the word "measures" should be qualified by an adjective such as "special", or "positive", and if so, which adjective would be preferable.

5. There was also general support for replacing the words "as defined in this Convention" by the words "on the basis of disability".

6. The retention of the phrase "separate standards" was dependent upon the resolution of linguistic and substantive questions. There was no agreement reached on how the phrase on the discontinuation of special measures should be worded. The Coordinator referred these last two phrases to the facilitator (Stefan Barriga, Liechtenstein) for further work with delegations.

7. Reflecting the discussions, paragraph 5 of draft article 7 reads:

> "5. [Special] [Positive] measures aimed at accelerating de facto equality of persons with disabilities shall not be considered discrimination on the basis of disability, [but shall in no way entail as a consequence the maintenance of unequal or separate standards]; [those measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved] [those

measures shall be discontinued when they are no longer justified in the light of the objectives of equal opportunity and equal treatment]."

Draft article 8

8. There was agreement that there should be an article in the convention on the right to life and broad support for it to be based on the text prepared by the Working Group. There was general agreement to add, at the end of the draft article, the words "on an equal basis with others".

9. Some delegations proposed broadening the draft article to include situations of risk, such as natural disaster, armed conflict and foreign occupation. Other delegations, however, had difficulty with this, and supported a more streamlined approach. Following an extensive discussion, there was general agreement to pursue the more streamlined approach adopted by the Working Group, but to include elsewhere in the convention a provision concerning the protection for persons with disabilities in times of public emergency or in situations of risk. Such protection could be provided for in a new draft article 8 bis, on the understanding that its ultimate placement could be considered at a subsequent stage.

10. Other proposals were made to elaborate upon or expand the provisions of draft article 8.

11. With these differing views in mind, the Coordinator proposed the following wording for draft article 8:

> "8. States parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others."

Draft article 8 bis

12. Draft article 8 bis would cover the broader obligation of States parties to preserve the safety of persons with disabilities. Taking into account the discussion of draft article 8, the Coordinator proposed the following wording:

> "[States parties recognize that in situations of risk to the general population persons with disabilities are especially vulnerable and shall take all feasible measures for their protection.]"[a]

13. It was noted that the phrase "all feasible measures" was drawn from paragraph 4 of article 38 of the Convention on the Rights of the Child.

14. There was a divergence of views on whether the wording of draft article 8 bis should be further elaborated to include specific instances of situations of risk. The issue was referred to the facilitator (Eduardo Calderón, Ecuador) for further discussion with delegations.

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[a] In the context of the discussion of paragraph 3 of draft article 12, the facilitator proposed the following text: "Special attention shall be paid to measures reflecting the particular vulnerability of persons with disabilities in situations of emergency, inter alia, during armed conflict or foreign occupation." The proposal was not discussed, on the understanding that it would be considered in the context of the discussions of draft article 8 bis.

Draft article 9

15. It was agreed to restructure draft article 9 around the text proposed by the facilitator (Rebecca Netley, Canada) on the basis of informal discussions. There was general agreement that the issues contained in paragraphs (d), (e) and (f) of the Working Group's text, which had not been dealt with in the facilitator's proposal, should be addressed in other articles of the convention.

16. Note was taken of a proposal to provide for an effective remedy in instances in which the rights and freedoms in the convention were violated, and it was agreed to consider the proposal at a subsequent stage.

Paragraph 1

17. There was extensive discussion of paragraph 1 of draft article 9 and general agreement to use the text of paragraph 1, prepared by the facilitator following informal discussions on paragraph (a) of the text of the Working Group amended to read as follows:

> "1. States parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law."

Paragraph 2

Chapeau

18. There was no general agreement on the wording of the chapeau of paragraph 2, including the meaning of the term "legal capacity". Some delegations expressed their concern in regard to the term and expressed the view that, if it were to be used, it should be translated into native languages and interpreted accordingly. It was agreed that, prior to the sixth session of the Ad Hoc Committee, individual delegations would need to consider the current wording, based on the facilitator's proposal, and that the Ad Hoc Committee would need to consider whether to retain the phrase "or the capacity to act", which was not used in comparable articles in other conventions, such as the Convention on the Elimination of All Forms of Discrimination against Women.

19. It was noted that the phrase "to the extent possible" referred to the extent to which resources were available and not to the capacity of persons with disabilities.

20. The text of the chapeau that delegations should consider prior to the sixth session of the Ad Hoc Committee reads:

> "2. States parties shall recognize that persons with disabilities have [legal capacity][b] on an equal basis with others in all fields and shall ensure, to the extent possible, that where support is required to exercise [that capacity] [the capacity to act]:"

[b] In Arabic, Chinese and Russian, the term "legal capacity" refers to "legal capacity for rights", rather than "legal capacity to act".

Subparagraph (a)

21. There was general agreement on subparagraph (a), which reads:

> "(a) The assistance provided is proportional to the degree of support required and tailored to the person's circumstances, that such support does not undermine the legal rights of the person, respects the will and preferences of the person and is free from conflict of interest and undue influence. Where appropriate, such support shall be subject to regular and independent review."

Subparagraph (b)

22. There was no agreement on subparagraph (b). Some delegations considered that there was no need for the subparagraph since the issue had been adequately covered within the continuum of support outlined in subparagraph (a), and that a separate and additional mention of the issue in subparagraph (b) might encourage its overuse by States parties and undermine the concept of all persons with disabilities having legal capacity and the concept of supported decision-making. Other delegations, however, did want separate mention of personal representation and the safeguards around its use, although some were of the view that the language of subparagraph (b) was too specific.

23. Subparagraph (b) currently reads:

> "(b) Where States parties provide for a procedure, which shall be established by law, for the appointment of personal representation as a matter of last resort, such a law shall provide appropriate safeguards, including regular review of the appointment of and decisions made by the personal representative by a competent, impartial and independent tribunal. The appointment and conduct of the personal representative shall be guided by principles consistent with this Convention and international human rights law."

Draft article 9 bis

24. During the discussion of draft article 9, considerable support was expressed for the inclusion in the convention of language that would guarantee persons with disabilities access to justice. Most delegations supported the inclusion of the language in a separate article. A number of delegations met informally to elaborate a proposal to include, as draft article 9 bis, the following:

> "States parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, facilitating their effective role as direct and indirect participants in all legal proceedings, including the investigative and other preliminary stages."

Draft article 10

Paragraph 1

25. There was general agreement on the text of paragraph 1, as prepared by the Working Group. There were, however, two areas in which amendments were proposed.

26. First, there was general agreement to delete from subparagraph (a), the words "without discrimination based on disability" and instead to add, to the chapeau of paragraph 1, the words "on an equal basis with others".

27. Second, some delegations proposed the insertion, in subparagraph (b), of the word "solely", or "exclusively", before the words "on disability". One delegation proposed that an alternative way of addressing the issue would be to add the words "in no case shall the existence of a disability justify a deprivation of liberty" to the end of the paragraph. There was general agreement to use this proposal as a basis for the discussion, although it was understood that some delegations would need to consider the text further. Other delegations considered subparagraph (b) to be redundant, because it was essentially an elaboration of subparagraph (a). The issue was referred to the facilitator (Gaile Ramoutar, Trinidad and Tobago) for further discussion.

28. Following the discussion, paragraph 1 reads:

> "1. States parties shall ensure that persons with disabilities, on an equal basis with others:
>
> "(a) Enjoy the right to liberty and security of person;
>
> "(b) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law and in no case [based solely [exclusively] on disability] [shall the existence of a disability justify a deprivation of liberty]."

Paragraph 2

29. There was general agreement to replace the word "are", at the end of the chapeau of paragraph 2, by the words "have at least the following guarantees", and to insert the words "To be" at the beginning of subparagraphs (a) to (d).

30. There was general support for the proposal that a non-exhaustive list of the various contexts in which deprivation of liberty may occur be inserted in the chapeau of paragraph 2. There was much support for the insertion, also in the chapeau, of the words "through a civil, criminal, administrative or other process" after the word "liberty".

31. There was general agreement to insert the words "and worth" after the word "dignity" in subparagraph (a), as in the Preamble to the Charter of the United Nations. There was also general agreement on the proposal that the latter part of subparagraph (a) read: "and in a manner that respects their human rights, conforms with the objectives and principles of this Convention, and reasonably accommodates their disability".

32. In regard to subparagraph (b), there was general agreement to replace the words "adequate information in accessible formats" by the words "adequate accessible information", and to insert the words "their legal rights and" before the words "the reasons for the deprivation of their liberty". It was proposed that the word "promptly" be inserted after the word "provided", as in paragraph 2 of article 9 of the International Covenant on Civil and Political Rights.

33. The Coordinator proposed that, for the time being, the words "and a fair hearing, including the right to be heard" be inserted after the word "liberty" in

subparagraph (i) of paragraph 2 (c), and that the subparagraph encompass the idea of an appeal process. There was provisional agreement to replace subparagraph (ii) of paragraph 2 (c) by the following text: "Seek review on an equal basis with others of the deprivation of their liberty, including periodic review as appropriate".

34. There was substantial support for the concept contained in subparagraph (d), although two divergent views on its placement. The first view was to have a shortened version of the text prepared by the Working Group, which would read: "To be provided with compensation in the case of deprivation of liberty contrary to this Convention". The second view would replace the subparagraph by a new paragraph 3, based on paragraph 5 of article 9 of the International Covenant on Civil and Political Rights, which would read: "Any person with a disability who has been the victim of unlawful deprivation of liberty shall have an enforceable right to compensation". This issue was referred to the facilitator for discussion with interested delegations.

35. Following the discussion, paragraph 2 reads:

"2. States parties shall ensure that if persons with disabilities are deprived of their liberty [through a civil, criminal, administrative or other process], they have at least the following guarantees:

"(a) To be treated with humanity and respect for the inherent dignity and worth of the human person, and in a manner that respects their human rights, conforms with the objectives and principles of this Convention, and reasonably accommodates their disability;

"(b) To be provided [promptly] with adequate accessible information as to their legal rights and the reasons for the deprivation of their liberty;

"(c) To be provided with prompt access to legal and other appropriate assistance to:

"(i) Challenge the lawfulness of the deprivation of their liberty [and to receive a fair hearing, including the right to be heard] before a court or other competent, independent and impartial authority (in which case, they shall be provided with a prompt decision on any such action);

"[(ii) Seek review on an equal basis with others of the deprivation of their liberty, including periodic review as appropriate;]

"[(d) To be provided with compensation in the case of deprivation of liberty contrary to this Convention.]

"[3. Any person with a disability who has been the victim of unlawful deprivation of liberty shall have an enforceable right to compensation.]."

Draft article 11

New paragraph 1

36. Several delegations pointed out that draft article 11 lacked mention of the important and absolute prohibition of the use of torture, as contained in other human rights treaties. Some delegations suggested that this omission could be rectified by the inclusion of a new paragraph 1, borrowing from the first sentence of article 7 of

the International Covenant on Civil and Political Rights, which reads: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". There was general agreement to that proposal, with the use of the phrase "no person with disabilities". It was also agreed to add the first phrase from paragraph 2 of the Working Group's text, so that the paragraph accurately mirrored article 7 of the Covenant. New paragraph 1 of draft article 11 currently reads:

> "1. No person with disabilities shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, States parties shall prohibit, and protect persons with disabilities from, medical or scientific experimentation without the free and informed consent of the person concerned."

Existing paragraph 1

37. There was broad agreement on paragraph 1 of the text prepared by the Working Group, which would be renumbered as paragraph 2 and read:

> "2. States parties shall take all effective legislative, administrative, judicial, educational [medical] [sanitary] or other measures to prevent persons with disabilities from being subjected to torture or cruel, inhuman or degrading treatment or punishment."

Existing paragraph 2

38. There was broad agreement on the substance of paragraph 2 of the Working Group's text, which read:

> "2. In particular, States parties shall prohibit, and protect persons with disabilities from, medical or scientific experimentation without the free and informed consent of the person concerned, and shall protect persons with disabilities from forced interventions or forced institutionalization aimed at correcting, improving or alleviating any actual or perceived impairment."

There was, however, a divergence of views in regard to two issues.

39. First, during the discussion of the phrase "free and informed consent" two amendments were suggested, so that the phrase would read "free, informed and clearly expressed prior consent". Some delegations were of the view that the existing phrase was well understood in international human rights law, and the requirement that consent be clearly expressed and prior were implicit. It was noted that the Human Rights Committee had adopted that view in its general comment No. 20 (1992), on article 7 of the International Covenant on Civil and Political Rights. Other delegations considered that because there was need to tailor the present convention to persons with disabilities, a specific requirement that consent be "clearly expressed" could be necessary. The issue was referred to the facilitator (Carina Mårtensson, Sweden) for further discussion.

40. Second, it was proposed that the words "or other form of" be added to the phrase "medical or scientific experimentation", which would then read "medical, scientific or other form of experimentation". The proposed wording was referred to the facilitator.

41. Finally, while there was general agreement on the paragraph as a whole, some delegations proposed amending its structure. All delegations agreed on the wording

"States parties shall prohibit, and protect persons with disabilities from, medical or scientific experimentation without the free and informed consent of the person concerned". There was general agreement on the issue and principle of protecting persons with disabilities from "forced interventions or forced institutionalization aimed at correcting, improving or alleviating any actual or perceived impairment", but also agreement that the precise wording (including the meaning of the words "institutionalization" and "perceived") would need to be further considered, as would the placement of such a provision. There was broad support, however, during subsequent discussion that draft article 12 bis was the appropriate place for such issues to be resolved (see paras. 60-62 below).

42. A proposal was made to include in draft article 11 a provision on monitoring of the institutions in which persons with disabilities are placed. Discussion of the proposal was deferred to a subsequent stage.

Draft article 12

43. After a number of delegations commented on the repetitive language in draft article 12 of the text prepared by the Working Group, the Coordinator proposed that the facilitator's text be used as the basis for discussion, on the understanding that it was very much a work in progress.

44. There was general agreement that draft article 12 should focus on freedom from violence and abuse, with the right to free and informed consent to interventions or treatment dealt with in a separate draft article 12 bis.

Paragraph 1

45. There was general agreement to delete the phrase "and their families" from paragraph 1 of the facilitator's text, but some delegations proposed its insertion in paragraph 2, after the words "persons with disabilities".

46. There was broad agreement that women and girls, or women and children, were particularly vulnerable to violence and abuse, but no agreement about where and how such a reference should be made. Interested delegations were invited to confer about an appropriate way to deal with the issue.

47. Consideration was given to a number of proposals for dealing with the forms of violence and abuse spelled out in paragraph 3, although a consensus had not yet formed around one of the options.[c] Interested delegations were requested to work with the facilitator (Ivana Grollová, Czech Republic) with a view to resolving the issue.

48. Taking into account the discussions, paragraph 1 reads:

> "1. States parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities both within and outside the home, from [all forms of exploitation, violence and abuse] [all

[c] One option is to include a list of forms of violence but to make it clear that is was not exhaustive by introducing it with the words "protection from all forms of harm, including:". A second option is to replace the list by the proposed formulation: "all forms of exploitation, violence and abuse". A third option is to use the wording from the second option, but also to include a detailed list of forms of violence in the preamble.

forms of harm, including] [all forms of exploitation, violence and abuse, including abandonment, violence, injury or mental or physical abuse, abduction, harassment, neglect or negligent treatment, maltreatment or exploitation, including economic and sexual exploitation and abuse]."

Paragraph 2

49. There was general agreement to paragraph 2 of the facilitator's text, although, as with paragraph 1, some divergence of views as to the need to mention families or caregivers of persons with disabilities. Some delegations took the view that the paragraph was not needed since it duplicated paragraph 1. The paragraph currently reads:

"2. States parties shall also take all appropriate measures to prevent violence and abuse by ensuring, inter alia, appropriate forms of assistance and support for persons with disabilities [and their caregivers], including through the provision of information and education on how to avoid, recognize and report instances of violence and abuse."

Paragraph 3

50. Proposals to include the issue of persons with disabilities in situations of public emergency were not discussed on the understanding that they would be considered in conjunction with the discussions to be held on a separate draft article dealing with the issue (see paras. 12-14 above).

Paragraph 4

51. Clear support was expressed for paragraph 4, on the monitoring of facilities and programmes used by persons with disabilities. There was also a certain degree of support for inserting the word "regular" before the word "monitoring".

52. There was some discussion on the scope of such a paragraph. While some delegations suggested its widening, there was general agreement that it should not be widened so much that it incorporated the services and facilities used by persons with disabilities since it was intended for more general use, such as in banks. The facilitator was requested to work with delegations with a view to formulating appropriate language.

53. Following the discussion, the paragraph became paragraph 3 of draft article 12, and reads:

"3. States parties shall ensure that all facilities and programmes, both public and private, [where persons with disabilities live or access services separate from others] are regularly and effectively monitored, in coordination with civil society, by independent authorities which include persons with disabilities and which make monitoring reports available to the public, in order to prevent the occurrence of violence or abuse."

Paragraph 5

54. There was general agreement to paragraph 5 of the facilitator's text with the minor reordering reflected below. Support was expressed for inserting the words

"and welfare", "cognitive" and "worth" in the paragraph. Following the discussion, the paragraph became paragraph 4 of draft article 12, and reads:

> "4. States parties shall take all appropriate measures to promote the physical [cognitive] and psychological recovery, rehabilitation and social reintegration of persons with disabilities who are victims of any form of violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health [and welfare], self-respect, dignity [, worth] and autonomy of the person."

Paragraph 6

55. There was general agreement to paragraph 6 of the facilitator's text. One delegation suggested that the phrase "and, as appropriate, judicial involvement" (which had appeared in the text prepared by the Working Group) should be retained. The general sense, however, was that this intent was implicit in the paragraph and did not need to be spelled out.

56. One delegation suggested that the paragraph should also deal with the prevention of violence and abuse. Other delegations, however, considered that prevention was dealt with elsewhere in the convention and did not need to be repeated in paragraph 6. Concerned delegations were asked to discuss the issue with the facilitator.

57. Following the discussion, the paragraph became paragraph 5 of draft article 12, and reads:

> "5. States parties shall put in place effective legislation and policies to ensure that instances of violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted, and that protection services are available in such cases."

Draft article 12 bis

58. Some delegations considered that involuntary medical treatment was tantamount to torture and should therefore continue to be dealt with under draft article 11, as in the text prepared by the Working Group. Most delegations, however, were of the view that issues relating to the right to free and informed consent to interventions should be dealt with in a separate article that focused solely on that issue.

Paragraph 1

59. There was general agreement that paragraph 1 should begin with a positive obligation of States parties to protect the integrity of persons with disabilities on a basis of equality with others. The paragraph currently reads:

> "1. States parties shall protect the [physical and mental] integrity of persons with disabilities on a basis of equality of others."

Paragraph 2

60. There was general agreement that the obligation of States parties to "protect persons with disabilities from forced interventions or forced institutionalization

aimed at correcting, improving or alleviating any actual or perceived impairment" should be moved from paragraph 2 of draft article 11 to draft article 12 bis.

61. Some delegations suggested that the paragraph specifically list certain types of interventions (such as sterilization, abortion or removal of organs). Some delegations suggested that the issue was best dealt with in draft article 14.

62. The paragraph currently reads:

> "2. States parties shall protect persons with disabilities from forced interventions or forced institutionalization aimed at correcting, improving or alleviating any actual or [perceived] impairment."[d]

Paragraph 3

63. There was general agreement that the facilitator's paragraphs 1 ter, quater and quinquies (which arose from the discussion of draft article 12) should be merged and replaced by a more general obligation.

64. While some delegations expressed the wish to regain such paragraphs in the article, other delegations considered that draft article 9 already provided for situations in which persons with disabilities could not exercise legal capacity. It was considered that reiteration of a right to intervene without consent might risk undermining the presumption that persons with disabilities had the legal capacity to give free and informed consent, and could run contrary to the spirit of the convention.

65. Other delegations considered that if there were to be a provision on involuntary treatment, it should provide that treatment be conducted on a non-discriminatory basis. That is, rather than specify the grounds for involuntary intervention, the paragraph should specify that rules on involuntary intervention — for example, in times of medical emergency where obtaining consent is impossible — should be the same for all people, regardless of whether they have a disability or not.

66. Some support was expressed for such a provision, which was referred to the facilitator for refinement. The paragraph would read:

> "3. In cases of medical emergency or issues of risk to public health involving involuntary interventions, persons with disabilities shall be treated on an equal basis with others."

Paragraph 4

67. Some delegations proposed that the convention contain a provision that obliged States parties to minimize exceptions to the right to free and informed consent and to provide safeguards, although not all agreed that the paragraph was necessary. There was general agreement to consider the following proposed text:

> "4. States parties shall ensure that involuntary treatment of persons with disabilities is:
>
> "(a) Minimized through the active promotion of alternatives;

[d] It was agreed that the precise wording of paragraph 2, including the work "perceived" will need to be given further consideration by the Ad Hoc Committee (see para. 41 above).

"(b) Undertaken only in exceptional circumstances, in accordance with procedures established by law and with the application of appropriate legal safeguards;

"(c) Undertaken in the least restrictive setting possible, and that the best interests of the person concerned are fully taken into account;

"(d) Appropriate for the person and provided without financial cost to the individual receiving the treatment or to his or her family."

Draft article 13

Chapeau

68. There was general agreement (a) to bring the chapeau of draft article 13 into line with other conventions by inserting the word "all" before the words "appropriate measures"; (b) to replace the word "and", which appeared after the word "opinion", by the words "including the right"; and (c) to insert the words "and ideas" after the words "impart information".

69. Following consultations by the facilitator (Omar Kadiri, Morocco), the Coordinator proposed that the words "appropriate modes of communication ... means of communication" in the facilitator's text be replaced by the words "sign languages, and Braille, and augmentative alternative communication and all other accessible means, modes and formats of communication of their choice".

70. One delegation proposed the inclusion in the draft article of the concept of freedom of thought. The Committee noted that, in the International Covenant on Civil and Political Rights, freedom of thought was dealt with in a separate article from freedom of expression, and it was agreed to give further consideration to the issue at a subsequent stage.

71. The chapeau of draft article 13 currently reads:

"States parties shall take all appropriate measures to ensure that persons with disabilities can exercise their right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through sign languages, and Braille, and augmentative alternative communication and all other accessible means, modes and formats of communication of their choice, including by:".

Subparagraph (a)

72. There was general agreement that the facilitator's text be used as the text of subparagraph (a).

73. Some delegations, however, expressed concern about the open-ended commitment of resources that the phrase "public information" implied if it were not qualified in some way. There were a number of proposals to address that concern. First, there were several proposals to qualify the word "public" with phrases such as "publicly available", or "official". Second, there was a proposal to begin the paragraph with the words "Taking appropriate steps to provide". Third, there was a proposal to insert the words "upon request".

74. There was no general agreement to the above-mentioned proposals. It was pointed out that the qualifiers were not needed because systems and formats designed from the outset for accessibility would not involve significant additional cost to governments.

75. Following the discussion, subparagraph (a) reads:

> "(a) [Taking appropriate steps to provide] [Providing] [official] [public] [public, official] [publicly available official] information [intended for the general public] [that States parties and other public authorities provide to the general public] to persons with disabilities, [upon request,] in a timely manner and without additional cost for persons with disabilities, and in accessible formats and technologies appropriate to different kinds of disabilities;".

Subparagraph (b)

76. The Coordinator proposed that the words: "Accepting and facilitating" be adopted provisionally as the introductory clause of subparagraph (b). It was agreed that, for the sake of consistency, the words "a variety of modes of communication" be replaced for the time being by the words used in the chapeau, pending agreement on a more concise formulation in the paragraphs in question.

77. Following the discussion, subparagraph (b) reads:

> "(b) [Accepting and facilitating] the use of sign languages, and Braille, and augmentative alternative communication and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;".

Subparagraph (c)

78. It was provisionally agreed to replace the words "modes of communication of their choice" in subparagraph (c) by the wording used in the chapeau of draft article 13.

79. There was no agreement, however, on whether the subparagraph should be introduced with the words "Providing educational, programmes" or "Promoting opportunities for training".

80. It was agreed to retain subparagraph (c) in draft article 13, pending further discussion about its appropriate placement. The subparagraph currently reads:

> "(c) [Providing educational programs] [Promoting opportunities for training] aimed at teaching persons with disabilities and, where appropriate, other concerned persons, to use sign languages, and Braille, and augmentative alternative communication and all other accessible means, modes and formats of communication of their choice;".

Subparagraph (d)

81. There was reaffirmation of the agreement reached during the fourth session of the Ad Hoc Committee to consolidate subparagraph (d), which read "(d) Undertaking and promoting the research, development and production of new technologies, including information and communication technologies, and assistive technologies, suitable for persons with disabilities;", with similar paragraphs

elsewhere in the text (see A/59/360, annex IV, para. 9). It was agreed that the text should be incorporated in draft article 4, on general obligations.

Subparagraph (e)

82. It was decided to consider subparagraph (e) in conjunction with draft articles 17, on education, and 19, on accessibility, at a subsequent meeting. The subparagraph reads as follows:

> "(e) Promoting other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;".

Subparagraphs (f) and (g)

83. It was generally agreed that subparagraph (f) should be retained, pending resolution of the issue of whether information provided by the private sector would be covered by subparagraph (a).

84. There was no agreement on whether the two subparagraphs should be introduced with the word "Encouraging", as in the text prepared by the Working Group, or strengthened by using instead the word "Urging", or "Requiring". There was some recognition that delegations should bear in mind the need to develop a convention that attracts the maximum number of States parties.

85. Some delegations proposed merging subparagraphs (f) and (g) and others proposed mentioning the Internet either in both paragraphs as well as in the chapeau, or as the subject of a separate paragraph.

86. Subparagraphs (f) and (g) currently read:

> "(f) [Encouraging] [Urging] [Requiring] private entities that provide services to the general public to provide information and services in accessible and usable formats for persons with disabilities;
>
> "(g) [Encouraging] [Urging] [Requiring] the mass media to make their services accessible to persons with disabilities;".

Subparagraph (h)

87. There was no general agreement on whether it was desirable to retain the ideas in subparagraph (h) of the compilation text, but it was decided that the subparagraph should be maintained until it had been considered more fully at a future meeting.

88. Subparagraph (h), on which further discussions are required, reads:

> "(h) [Developing/recognizing/promoting] a national sign language."

Subparagraphs (i), (j) and (k)

89. There was general agreement that the ideas set out in subparagraphs (i), (j) and (k) of the facilitator's text should not be included in draft article 13 but considered during the discussion of draft article 19 on accessibility, at a subsequent meeting.

Draft article 14

90. There was broad support to split the substance of the text prepared by the Working Group for draft article 14 into two separate articles. It was agreed that paragraph 1 of the Working Group's text, which addressed privacy matters, would remain in draft article 14, and that paragraph 2, which addressed matters related to home and the family, would become a new article 14 bis.

91. It was noted that in a number of places paragraph 1 of the Working Group's text deviated from similar provisions in the International Covenant on Civil and Political Rights. It was also noted that there was some duplication between draft article 14 and subparagraphs (j) and (l) of draft article 21, which also covered issues related to the privacy of medical records.

92. Following an extensive discussion, it was generally agreed to use the language of article 17 of the Covenant (which also appears in article 16 of the Convention on the Rights of the Child) as a basis for the text, with minor amendments, as follows:

(a) The first amendment would take into account the particular circumstances of people with disabilities by the addition of the phrase "regardless of place or residence or living arrangements". Although some delegations noted that the phrase was unnecessarily lengthy, there was general agreement to the amendment;

(b) The second amendment was to update the term "correspondence" and to take into consideration more recent communication technologies. There was general agreement on the phrase "correspondence or other types of communication" which was based on the phrase used in the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

93. Following the discussion, draft article 14 reads:

> "No persons with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence or other types of communication, or to unlawful attacks on his or her honour and reputation. All persons with a disability have the right to the protection of the law against such interference or attacks."

Draft article 14 bis

94. It was noted that, in drafting article 14 bis, the Working Group had not intended to promote changes to the policies of States parties concerning home and family matters for the general population, including policies on family size, marriage and reproduction. There was general agreement that the intention was that, in regard to such issues, people with disabilities be treated on an equal basis with others.

95. There was general agreement that subparagraphs (a), (b) and (c) of the Working Group's text should become subparagraphs (a), (b) and (c) of paragraph 1 of draft article 14 bis, and that subparagraphs (d), (e) and (f) of the text should become paragraphs 2, 3 and 4 of the draft article.

96. A general proposal was made to delete subparagraph (a) and to incorporate its concepts in subparagraphs (b) and (c). Several delegations supported the proposal, which can be found on the web site of the Ad Hoc Committee (www.un.org/esa/socdev/enable/rights/).

Paragraph 1

Chapeau

97. There was general agreement that the chapeau of paragraph 2 of draft article 14 of the Working Group's text should become the chapeau of paragraph 1 of draft article 14 bis. There was also agreement to insert the words "on an equal basis with others", so that the chapeau of paragraph 1 would read:

> "1. States parties to this Convention shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage and family relations, and in particular shall ensure, on an equal basis with others:"

Subparagraph (a)

98. Some delegations noted that the language of subparagraph (a) might be too explicit for general agreement.

99. It was noted that a fundamental issue for this paragraph was the reality that most countries have historically treated people with disabilities differently from the general population in relation to family and marriage matters. There was no disagreement on the underlying approach of the subparagraph, which was to ensure that no State party treated people with disabilities differently in that regard. It was also understood that the subparagraph should in no way pronounce on or attempt to influence the general rules that apply to the general population in different countries and cultures.

100. To reflect the latter idea, some delegations supported the addition of the words "in accordance with national law", or the words "in accordance with the laws, customs and traditions in each country". It was noted that these additions could make the subparagraph subject to laws or traditions that contradict the fundamental obligation set forth in draft article 14 bis, which was to treat people with disabilities no differently from other persons in society.

101. Some delegations supported the deletion of the subparagraph, on the grounds that too many details in the article could interfere with existing rights or impose the accordance of rights upon which there had been no agreement. However, other delegations considered it necessary to maintain a subparagraph covering the issue since it was an area in which people with disabilities were particularly vulnerable to discriminatory treatment.

102. Other proposals included:

(a) Deletion of the word "sexuality" and the insertion of the words "through a legal or legitimate marriage";

(b) Replacing the text with the words "That the sexuality of people with disabilities should be respected on an equal basis with others".

103. It was noted that, in Spanish, the term "parenthood" should refer to both men and women.

104. Following the discussion, subparagraph (a) reads:

> "(a) That persons with disabilities are not denied the equal opportunity to [experience their sexuality,] have sexual and other intimate relationships [through a legal marriage] and experience parenthood [in accordance with the national laws, customs and traditions in each country]."

Subparagraph (b)

105. There was general agreement to draw upon paragraphs 2 and 3 of article 23 of the International Covenant on Civil and Political Rights as the basis for subparagraph (b).

106. A proposal to add the words "and that husband and wife should be equal partners" received some support.

107. It was noted that the text of the subparagraph could be interpreted as not including marriage between people with disabilities and people with no disabilities. That issue was referred to the facilitator (Anthony Miyeni, South Africa) to find language that resolved this ambiguity, possibly through use of the phrase "persons with disabilities" rather than the phrase "men and women".

108. Following the discussion, the text of subparagraph (b) reads:

> "(b) That the right of all [men and women] [persons] with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses, is recognized [, and that husband and wife should be equal partners];".

Subparagraph (c)

109. There was general agreement on the first part of subparagraph (c).

110. It was noted that the phrase "reproductive and family planning education" in the second part of the subparagraph went further than subparagraph 1 (e) of article 16 of the Convention on the Elimination of All Forms of Discrimination against Women from which it had been derived. It was generally agreed that the article was not intended in any way to alter or prejudice the general policies of governments in regard to family planning or related matters, to the extent that these were permitted by national legislation of general application. There was general support for the addition of the clause "to the extent that these are permitted by national legislation of general application", which would ensure that this approach was understood. Some delegations, however, preferred the deletion of the text that followed the words "on an equal basis with other persons".

111. It was noted that there was a high level of support for the idea that forced sterilization, forced abortion or forced removal of organs should be clearly prohibited in some part of the convention. There was not, however, common agreement on where to deal with the issue.[c] A proposal to add the words "and the

[c] See also the discussion under draft article 12 bis, above.

equal opportunity to retain their fertility" to the subparagraph received some support, although some delegations noted that the concept was implicit in the text.

112. Following the discussion, subparagraph (c) reads:

> "(c) The rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children [and to have access to information, reproductive and family planning education, the means necessary to enable them to exercise these rights and the equal opportunity to retain their fertility to the extent that these are permitted by national legislation of general application]."

Paragraph 2

113. There was general support for the insertion, in paragraph 2, of the words "and in all cases the interests of the child shall be paramount".

114. Issues with the term "adoption" were discussed, and it was noted that, with a view to addressing such issues, the words "where these concepts exist in national legislation" had been borrowed from paragraph 1 (f) of article 16 of the Convention on the Elimination of All Forms of Discrimination against Women for the purpose of addressing these issues. Delegations were requested to meet with the facilitator in order to determine whether the existing language could meet their concerns.

115. It was noted that the words "rights and responsibilities", which were also contained in subparagraph 1 (f) of the Convention, had been omitted from the paragraph drafted by the Working Group. There was support for retaining the words in order to create balance; however, there was also some opposition. The delegations concerned were asked to discuss the issue with the facilitator.

116. It was noted that the second part of paragraph 2 of the text prepared by the Working Group might imply that the assistance referred to was intended only for the situations referred to in the first part of the paragraph. It was also noted that the deletion of the introductory phrase of the last sentence ("for the purpose of guaranteeing these rights") addressed that issue, and that a separate issue related to the wording had been raised in footnote 49 of the Working Group's text, which questioned whether States parties could guarantee the resources required. It was agreed that the footnote should be retained.

117. Following the discussion, paragraph 2 reads:

> "2. States parties to this Convention shall ensure [the rights and responsibilities of] [that there is no discrimination against] persons with disabilities in regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation and that in all cases the interests of the child are paramount. States parties shall render appropriate assistance to disabled persons in the performance of their child-rearing responsibilities."[f]

[f] The Ad Hoc Committee may wish to consider the wording of the second sentence of paragraph 2 in the light of the concerns expressed by some delegations that States parties might find it difficult to guarantee the availability of resources to "render appropriate assistance".

Paragraph 3

118. There was general agreement that no child should be separated from his or her parents on the basis of disability of either the child or one or both of the parents. It was agreed that any separation must be in the best interests of the child and should be on the same basis as for people without disabilities.

119. There was general agreement to delete the words "either directly or indirectly". There was also no opposition to a proposal to broaden the concept of judicial review in order to allow for other review procedures established by law.

120. Following the discussion, paragraph 3 reads:

> "3. States parties shall ensure that a child is not separated from his or her parents against their will, except when competent authorities determine, in accordance with applicable law and procedures and subject to judicial review or other forms of administrative review as established by law, that such separation is necessary in the best interests of the child. In no case shall a child be separated from parents on the [basis] [existence] of disability of either the child or one or both of the parents."

Paragraph 4

121. The wish to keep the articles of the convention general and reasonably concise was noted. On the other hand, it was noted that there were areas in which persons with disabilities had suffered appalling and particular discrimination, despite the general application of existing human rights treaties. It was considered that a balance must be found between providing the correct degree of detail and not allowing the convention to become overly complex and repetitive.

122. There was no agreement on where, if at all, the specific issues dealt with in subparagraph (f) should appear in the convention. A number of delegations supported dealing with the content of the paragraph in draft article 5, where similar issues were dealt with generically. Other delegations, however, emphasized the need to retain the wording within article 14 bis.

123. It was agreed to consider the best placement of subparagraph (f) at a subsequent stage.

124. There was no agreement on the content of the paragraph. A number of reformulations of the paragraph were supported, including:

(a) Deletion of the word "sexuality". This proposal was, however, also opposed;

(b) Qualification of the word "information" so that it would imply accessibility and address the fact that awareness was required not only within the context of the general public but also by people with disabilities. There was no opposition to this proposal.

125. Following the discussion, paragraph 4 reads:

> "4. States parties shall take [all] appropriate and effective measures to promote awareness, and provide education and information to the public in accessible formats, aimed at changing negative perceptions and social prejudices towards [sexuality marriage and parenthood] [in all matters of marriage and family relations] for persons with disabilities."

Draft article 15

126. Discussion of draft article 15 was begun but there was insufficient time to complete it. It was agreed that the discussion would be resumed at the sixth session of the Ad Hoc Committee.

Annex III

Status of the text following the discussions held during the fifth session of the Ad Hoc Committee

Draft article 7, paragraph 5

5. [Special] [Positive] measures aimed at accelerating de facto equality of persons with disabilities shall not be considered discrimination on the basis of disability, [but shall in no way entail as a consequence the maintenance of unequal or separate standards]; [those measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved] [those measures shall be discontinued when they are no longer justified in the light of the objectives of equal opportunity and equal treatment].

Draft article 8

States parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.

Draft article 8 bis

[States parties recognize that in situations of risk to the general population persons with disabilities are especially vulnerable and shall take all feasible measures for their protection.]

Draft article 9

1. States parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.

2. States parties shall recognize that persons with disabilities have [legal capacity][a] on an equal basis with others in all fields and shall ensure, to the extent possible, that where support is required to exercise [that capacity] [the capacity to act]:

(a) The assistance provided is proportional to the degree of support required and tailored to the person's circumstances, that such support does not undermine the legal rights of the person, respects the will and preferences of the person and is free from conflict of interest and undue influence. Where appropriate, such support shall be subject to regular and independent review;

(b) Where States parties provide for a procedure, which shall be established by law, for the appointment of personal representation as a matter of last resort, such a law shall provide appropriate safeguards, including regular review of the appointment of and decisions made by the personal representative by a competent,

[a] In Arabic, Chinese and Russian the term "legal capacity" refers to "legal capacity for rights", rather than "legal capacity to act".

impartial and independent tribunal. The appointment and conduct of the personal representative shall be guided by principles consistent with this Convention and international human rights law.

Draft article 9 bis

States parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, facilitating their effective role as direct and indirect participants in all legal proceedings, including the investigative and other preliminary stages.

Draft article 10

1. States parties shall ensure that persons with disabilities, on an equal basis with others:

(a) Enjoy the right to liberty and security of person;

(b) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law and in no case [based solely [exclusively] on disability] [shall the existence of a disability justify a deprivation of liberty].

2. States parties shall ensure that if persons with disabilities are deprived of their liberty [through a civil, criminal, administrative or other process], they have at least the following guarantees:

(a) To be treated with humanity and respect for the inherent dignity and worth of the human person, and in a manner that respects their human rights, conforms with the objectives and principles of this Convention, and reasonably accommodates their disability;

(b) To be provided [promptly] with adequate accessible information as to their legal rights and the reasons for the deprivation of their liberty;

(c) To be provided with prompt access to legal and other appropriate assistance to:

(i) Challenge the lawfulness of the deprivation of their liberty [and to receive a fair hearing, including the right to be heard] before a court or other competent, independent and impartial authority (in which case, they shall be provided with a prompt decision on any such action);

[(ii) Seek review on an equal basis with others of the deprivation of their liberty, including periodic review as appropriate;]

[(d) To be provided with compensation in the case of deprivation of liberty contrary to this Convention.]

[3. Any person with a disability who has been the victim of unlawful deprivation of liberty shall have an enforceable right to compensation].

Draft article 11

1. No person with disabilities shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, States parties shall prohibit, and protect persons with disabilities from, medical or scientific experimentation without the free and informed consent of the person concerned.

2. States parties shall take all effective legislative, administrative, judicial, educational [, medical] [, sanitary] or other measures to prevent persons with disabilities from being subjected to torture or cruel, inhuman or degrading treatment or punishment.

Draft article 12

1. States parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities both within and outside the home, from [all forms of exploitation, violence and abuse] [all forms of harm, including] [all forms of exploitation, violence and abuse, including abandonment, violence, injury or mental or physical abuse, abduction, harassment, neglect or negligent treatment, maltreatment or exploitation, including economic and sexual exploitation and abuse].

2. States parties shall also take all appropriate measures to prevent violence and abuse by ensuring, inter alia, appropriate forms of assistance and support for persons with disabilities [and their caregivers], including through the provision of information and education on how to avoid, recognize and report instances of violence and abuse.

3. States parties shall ensure that all facilities and programmes, both public and private, [where persons with disabilities live or access services separate from others] are regularly and effectively monitored, in coordination with civil society, by independent authorities which include persons with disabilities and which make monitoring reports available to the public, in order to prevent the occurrence of violence or abuse.

4. States parties shall take all appropriate measures to promote the physical [cognitive] and psychological recovery, rehabilitation and social reintegration of persons with disabilities who are victims of any form of violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health [and welfare], self-respect, dignity [, worth] and autonomy of the person.

5. States parties shall put in place effective legislation and policies to ensure that instances of violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted, and that protection services are available in such cases.

Draft article 12 bis

1. States parties shall protect the [physical and mental] integrity of persons with disabilities on a basis of equality of others.

2. States parties shall protect persons with disabilities from forced interventions or forced institutionalization aimed at correcting, improving or alleviating any actual or [perceived] impairment.

3. In cases of medical emergency or issues of risk to public health involving involuntary interventions, persons with disabilities shall be treated on an equal basis with others.

4. States parties shall ensure that involuntary treatment of persons with disabilities is:

(a) Minimized through the active promotion of alternatives;

(b) Undertaken only in exceptional circumstances, in accordance with procedures established by law and with the application of appropriate legal safeguards;

(c) Undertaken in the least restrictive setting possible, and that the best interests of the person concerned are fully taken into account;

(d) Appropriate for the person and provided without financial cost to the individual receiving the treatment or to his or her family.

Draft article 13

States parties shall take all appropriate measures to ensure that persons with disabilities can exercise their right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through sign languages, and Braille, and augmentative alternative communication and all other accessible means, modes and formats of communication of their choice, including by:

(a) [Taking appropriate steps to provide] [Providing] [official] [public] [public, official] [publicly available official] information [intended for the general public] [that States parties and other public authorities provide to the general public] to persons with disabilities [, upon request,] in a timely manner and without additional cost for persons with disabilities, and in accessible formats and technologies appropriate to different kinds of disabilities;

(b) [Accepting and facilitating] the use of sign languages, and Braille, and augmentative alternative communication and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;

(c) [Providing educational programmes] [Promoting opportunities for training] aimed at teaching persons with disabilities and, where appropriate, other concerned persons, to use sign languages, and Braille, and augmentative alternative communication and all other accessible means, modes and formats of communication of their choice;

...[b]

[b] It was agreed to incorporate the text of subparagraph (b) in draft article 4 and to consider subparagraph (c) in conjunction with draft articles 17 and 19 (see annex II, paras. 81-82).

(f) [Encouraging] [Urging] [Requiring] private entities that provide services to the general public to provide information and services in accessible and usable formats for persons with disabilities;

(g) [Encouraging] [Urging] [Requiring] the mass media to make their services accessible to persons with disabilities;

(h) [Developing] [Recognizing] [Promoting] a national sign language.

Draft article 14

No person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence or other types of communication or to unlawful attacks on his or her honour and reputation. All persons with a disability have the right to the protection of the law against such interference or attacks.

Draft article 14 bis

1. States parties to this Convention shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage and family relations, and in particular shall ensure, on an equal basis with others:

(a) That persons with disabilities are not denied the equal opportunity to [experience their sexuality,] have sexual and other intimate relationships [through a legal marriage] and experience parenthood [in accordance with the national laws customs and traditions in each country];

(b) That the right of all [men and women] [persons] with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses is recognized [and that husband and wife should be equal partners];

(c) The rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children [and to have access to information, reproductive and family planning education, the means necessary to enable them to exercise these rights and the equal opportunity to retain their fertility to the extent that these are permitted by national legislation of general application].

2. States parties to this Convention shall ensure [the rights and responsibilities of] [that there is no discrimination against] persons with disabilities in regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation and that in all cases the interests of the child is paramount. States parties shall render appropriate assistance to disabled persons in the performance of their child-rearing responsibilities.

3. States parties shall ensure that a child is not separated from his or her parents against their will, except when competent authorities determine, in accordance with applicable law and procedures and subject to judicial review or other forms of administrative review as established by law, that such separation is necessary in the best interests of the child. In no case shall a child be separated from parents on the [basis] [existence] of disability of either the child or one or both of the parents.

4. States parties shall take [all] appropriate and effective measures to promote awareness, and provide education and information to the public in accessible formats, aimed at changing negative perceptions and social prejudices towards [sexuality marriage and parenthood] [in all matters of marriage and family relations] persons with disabilities.